

UNITED STATES BANKRUPTCY COURT **MAR -7 2007**
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	CASE NUMBER
	:	
GEORGE WESLEY TAYLOR, JR.,	:	06-76846-MGD
	:	
Debtor.	:	CHAPTER 13
	:	

**ORDER DENYING DEBTOR'S MOTION TO DETERMINE THE IDENTITY OF
LIEN HOLDER AND DENYING DEBTOR'S MOTION TO RECONSIDER
ORDER DENYING DEBTOR'S MOTION TO EXTEND THE STAY AS TO HFC**

This Chapter 13 case is before the Court on a document filed by Debtor, *pro se*, on February 22, 2007. (Docket No. 69). Debtor's document, entitled "Motion," requests that the Court address a number of issues and the Court construes the document as Debtor's Motion to Determine the Identity of Lien Holder and to Reconsider the Order Denying Debtor's Motion to Extend the Stay as to HFC. For the reasons set forth below, both of Debtor's requests are **DENIED**.

I. Debtor's Request for Determination of the Identity of Lien Holder

The documents attached to Debtor's Motion indicate that on or about December 30, 2006, HFC mailed Debtor a letter indicating that Debtor's second mortgage, which had been serviced by HSBC, was now being serviced by HFC's Virginia Beach Processing Center and that communication should be directed to HFC at: "HFC, Virginia Beach Processing Center, P.O. Box 8873, Virginia Beach, VA 23452." On or about January 3, 2007, HSBC mailed Debtor a letter notifying Debtor of the transfer from HSBC to HFC and reiterating that Debtor should remit payments to HFC and communicate with HFC at the Virginia Beach address. On or about February 5, 2007, HSBC mailed Debtor another letter notifying him that the January 3, 2007 letter had been sent in error and that his mortgage servicing was not being transferred to HFC. This letter indicated that any payments sent to HFC would be forwarded

to HSBC for processing. The February 5, 2007 letter provided customer service phone numbers and the letterhead included an address, but the letter did not specify a mailing address to which Debtor should remit future payments or written communication.¹

Debtor's Motion indicates that he attempted to make a mortgage payment on January 28, 2007, by sending a "MoneyGram" to HSBC, but that the MoneyGram was returned. Debtor contacted HFC, but was unable to get a "receiver code" so that he could direct the MoneyGram to HFC, so Debtor overnighted two payments, via DHL, to HFC at the Virginia Beach Processing center on February 11, 2007. Debtor's Motion indicates that HFC refused the payments.² Based on these events, Debtor is requesting that this Court direct Debtor as to whether he should direct his second mortgage payment to HFC or HSBC.

While the Court understands Debtor's confusion, the Court has no authority, under these circumstances, to declare which entity should receive payment or to order that such entity accept payment. In seeking to determine which entity is entitled to payment, Debtor is in effect seeking a declaratory judgment regarding HFC and HSBC's interest in Debtor's property. Pursuant to Rule 7001(2) of the Federal Rules of Bankruptcy Procedure, proceedings to determine the validity, priority, or extent of a lien or other interest in property

¹ Debtor's Motion indicates that a copy of a letter from Bob Sawicki is attached to Debtor's Motion. A handwritten note by Debtor indicating that Bob Sawicki with HSBC promised Debtor that the transfer of the mortgage from HSBC to HFC would be stopped, and a note on a letter signed by Brij M. Bansal with HSBC indicating Bob Sawicki's name and telephone number, are attached to Debtor's Motion, but no letter from Bob Sawicki is attached. This has no effect on the Court's decision and is noted only to clarify the record.

² Debtor's Motion indicates that a copy of a "DHL print out" is attached showing HFC's refusal of the overnight letter with the checks enclosed. A photocopy of two checks paid to the order of HFC is attached to Debtor's Motion as is a copy of a DHL shipping form Debtor filled out indicating that a letter was being sent, 2nd day service, to HFC in Virginia Beach. No DHL receipt or other confirmation of delivery or refusal is attached to Debtor's Motion. This has no effect on the Court's decision and is noted only to clarify the record.

are adversary proceedings and Rule 7001(9) requires that proceedings seeking declaratory judgments on such matters must be brought as such. Debtor's Motion is therefore procedurally improper and must be denied, without prejudice to Debtor to file an appropriate adversary proceeding.

II. Debtor's Request to Reconsider Order Denying Debtor's Motion to Extend Stay

Debtor's Motion states that the Court's February 8, 2007 order failed to address or answer Debtor's previous motion to extend the stay and requests that the stay be extended. The Court entered no orders in this case on February 8, 2007, and the Court therefore assumes that Debtor is referring to the Court's February 15, 2007 Order Denying Debtor's Motion to Extend the Stay as to HFC (Docket No. 61), which Debtor filed on February 8, 2007. In its February 15, 2007 Order, the Court denied Debtor's motion and went to great lengths to explain to Debtor why the motion was denied—the stay as to HFC (and/or HSBC) expired on January 28, 2007, and thus cannot be extended. The stay can, however, be reimposed under certain circumstances and the Court's February 15, 2007 Order explicitly states that Debtor is not prohibited from filing a motion to reimpose the stay pursuant to 11 U.S.C. § 105. Debtor's Motion Reconsider the Order Denying Debtor's Motion to Extend the Stay as to HFC must therefore be denied.

While Debtor's Motion is denied without prejudice to Debtor to file an appropriate motion pursuant to 11 U.S.C. § 105, an order confirming Debtor's Chapter 13 plan was entered on February 28, 2007 (Docket No. 77), and HSBC, who is provided for in the plan, is bound by the terms of the plan pursuant to § 1327. HSBC is bound by the terms of Debtor's confirmed Chapter 13 Plan notwithstanding the fact that no stay was in effect as to HSBC prior to confirmation. *See In re Sullivan*, 321 B.R. 306 (Bankr. M.D. Fla. 2005); *In re Fleming*, 349 B.R. 444 (Bankr. D.S.C. 2006).

III. Deficient Service

Though both requests in Debtor's Motion are denied on independent grounds, the Court notes that it is not clear whether Debtor's Motion was properly served on any parties. Below the signature line on Debtor's Motion, Debtor lists 3 addresses, including "HSBC, 2929 Walden Avenue, Depew, NY 14043" and there are 2 certificates of services attached to Debtor's Motion, including one indicating that a motion was mailed to "HSBC Bankruptcy Department, c/o Bob Sawicki, 2929 Walden Avenue, Depew, NY 14043." However, the certificates of services attached to Debtor's Motion indicate that on February 21, 2007, Debtor served a copy of "Motion(s)" that were filed in his bankruptcy case on December 29, 2006. The Motion currently before the Court was filed on February 22, 2007, not December 29, 2006. In fact, Debtor did not file any documents entitled "Motion" on December 29, 2006. It appears that Debtor may be indicating the date his bankruptcy case was filed instead of the date the motions he served were filed, but the certificates of service are nonetheless deficient to prove that this Motion was properly served. HFC filed a proof of claim in this case,³ but neither HFC nor HSBC has made an appearance in this case. The Court therefore has no evidence that HFC and/or HSBC are aware of the Motion currently before the Court.

In addition to meeting the service requirements set forth in Federal Rule of Bankruptcy Procedure 7004, explained in detail in the Court's February 15, 2007 Order, service must also be memorialized by proper certificates of service. Certificates of service must be precise as to what documents were served on the receiving parties and should be identified by both a specific title and the date on which the document was filed with the

³ Proof of Claim No. 1, filed as a secured claim in the amount of \$36,304.23, was signed by Tabitha Walker in HFC's Bankruptcy Department and filed on January 5, 2007, indicating that notices should be sent to HFC at "HFC, P.O. Box 9618, Virginia Beach, VA 23450."

Court. Debtor should serve and document service of all pleadings in this case accordingly.

For the foregoing reasons, it is

ORDERED that Debtor's Motion to Determine the Identity of Lien Holder and to Reconsider the Order Denying Debtor's Motion to Extend the Stay as to HFC is **DENIED**.

The Clerk shall serve a copy of this Order upon Debtor, Chapter 13 Trustee, and all creditors in the case.

IT IS SO ORDERED this the 7th day of March, 2007.



MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE